

STATE OF CALIFORNIA
DEPARTMENT OF CORPORATIONS

FINAL TEXT OF PROPOSED CHANGES
UNDER THE CORPORATE SECURITIES LAW OF 1968
PURSUANT TO NOTICE OF PROPOSED CHANGES
DATED: August 7, 2002

1. Amend Section 260.211 to read:

~~260.211. Broker-Dealer Application~~

~~(a) The application for a certificate as a broker-dealer pursuant to subsection (a) of Section 25211 of the Code and an amendment to such application pursuant to Section 260.241.4(a) shall be filed upon Form BD (Uniform Application for Broker-Dealer Registration) (17 CFR 249.501), modified as, and containing the additional information, required by subsection (b).~~

~~(b) Instructions for California.~~

~~The Instructions for completing Form BD for filing in California are as follows:~~

~~DEPARTMENT OF CORPORATIONS~~

~~STATE OF CALIFORNIA~~

~~INSTRUCTIONS FOR COMPLETING AND FILING FORM BD~~

~~(UNIFORM APPLICATION FOR BROKER-DEALER~~

~~REGISTRATION) (17 CFR 249.501)~~

~~IN CALIFORNIA BY BROKER-DEALERS~~

Document OP 05/01-Final Text

NOTE: Additions to the original text dated January 18, 2002 are shown by double underscoring.
Deletions from the text are shown in double strike-out.

1 NOT FILING BY NOTIFICATION

2
3 ~~—(Only for Use in Connection With Applications and Amendments to Applications for Broker-~~
4 ~~Dealer Certificate Pursuant to Section 25211(a), Corporations Code, and Section 260.241.4, Title~~
5 ~~10, California Code of Regulations)~~

6
7 ~~PART I. FILING FEE AND MAILING ADDRESS.~~

8
9 ~~The fee for filing an application for a certificate as a broker-dealer is \$300.00. Make checks~~
10 ~~payable to DEPARTMENT OF CORPORATIONS and mail with Form BD to Department of~~
11 ~~Corporations, 1515 K Street, Sacramento, CA 95814. Fees are not refundable except pursuant to~~
12 ~~Section 250.15, Title 10, California Code of Regulations.~~

13
14 ~~PART II. INSTRUCTIONS AS TO ARREST RECORDS.~~

15
16 ~~The following instructions applies only to initial applications:~~

17 ~~Business and Professions Code Section 461 prohibits all public agencies from requiring, on~~
18 ~~an initial application, an applicant to reveal a record of arrest that did not result in a conviction or~~
19 ~~plea of nolo contendere. Accordingly, questions regarding criminal disclosure should be modified in~~
20 ~~accordance with California law. For more detailed information on how to respond to these~~
21 ~~questions, applicants should refer to the separate instruction sheet, which is available from any of~~
22 ~~the Department's offices and the Department's homepage.~~

23 ~~AN INITIAL APPLICATION WHICH IS NOT MODIFIED IN ACCORDANCE WITH~~
24 ~~THE SEPARATE INSTRUCTIONS WILL NOT BE RECEIVED FOR FILING BY THE~~
25 ~~DEPARTMENT AND WILL BE RETURNED WITHOUT PROCESSING.~~

1
2 ~~PART III. ADDITIONAL INFORMATION.~~

3
4 § 260.211. Application for Broker-Dealer Certificate

5
6 (a) For any broker-dealer that participates in the Central Registration Depository (“CRD”), the
7 application for a certificate as a broker-dealer shall be filed as follows:

8 (1) INITIAL APPLICATION: The application for a certificate as a broker-dealer pursuant to
9 subsection (a) of Section 25211 of the Code and an amendment to such application pursuant to
10 Section 260.241.4 shall be filed upon Form BD (Uniform Application for Broker-Dealer
11 Registration) (17 CFR 249.501)) in accordance with the form instructions and by filing the form
12 with CRD for transmission to the Commissioner. The Commissioner may require additional
13 documentation as deemed appropriate as prescribed in subsections (a)(1)(A) and (a)(1)(B) of this
14 rule.

15 (A) The Commissioner may require the applicant to file directly with the Commissioner, in
16 accordance with the separate instruction sheet, which is available from any of the Department’s
17 offices and the Department’s web site at <<http://www.corp.ca.gov>>, a Customer Authorization of
18 Disclosure of Financial Records, Consent to Service of Process or Form U-2, Statement of
19 Citizenship, Alienage, and Immigration Status Form, Statement of Financial Condition with
20 worksheet that demonstrates compliance with the minimum capital requirement as prescribed in
21 Section 260.216.12 and any additional documentation as required pursuant to these rules.

22 (B) The Commissioner may request additional information, documentation or detail pertaining to
23 Form BD to be filed directly with the Commissioner.
24
25

1 (2) FILING FEE: The fee for filing an initial application is \$300 as prescribed in Section 25608(o)
2 of the Code. The applicant shall remit the fee directly with CRD in accordance with its procedures
3 for transmission to the Commissioner. Fees are not refundable except pursuant to Section 250.15.

4 (3) COMPLETION OF FILING: For the purposes of Section 250.51, an application for a certificate
5 as a broker-dealer is not deemed filed until the required fee and all required submissions are
6 received by the Commissioner. The filing of Form BD with CRD does not constitute automatic
7 approval. The broker-dealer shall not consider the application approved until approved by the
8 Commissioner and the approval is received through CRD.

9 (b) For any broker-dealer that does NOT participate in the Central Registration Depository
10 ("CRD"), the application for a certificate as a broker-dealer shall be filed as follows:

11 (1) INITIAL APPLICATION The application for a certificate as a broker-dealer pursuant to
12 subsection (a) of Section 25211 of the Code and an amendment to such application pursuant to
13 Section 260.241.4(a) shall be filed upon Form BD (Uniform Application for Broker-Dealer
14 Registration) (17 CFR 249.501)) in accordance with the form instructions and by filing the form
15 directly with the Commissioner at the Department of Corporations, 1515 K Street, Suite 200,
16 Sacramento, CA 95814-4052. The Commissioner shall require additional documentation as deemed
17 appropriate as prescribed in subsections (b)(1)(A) through (b)(1)(E) of this rule.

18 ~~1-~~ (A) Financial Statements:

19 ~~(A)~~ (i) Attach a balance sheet as of a date within 45 days prior to the filing of the application,
20 which need not be audited. However, if the balance sheet is not audited, there should be filed, in
21 addition, an audited balance sheet as of the end of applicant's last fiscal year.

22 ~~(B)~~ (ii) Attach a calculation of the net capital and the ratio of net capital to aggregate indebtedness
23 of the applicant, in accordance with Section 260.216.12 of Title 10 of the California Code of
24 Regulations, as of the same date as the balance sheets submitted under ~~Item (A)~~ Item (i) above.

~~(C)~~ (iii) Attach copies of all currently effective subordination agreements. If any are substantially similar, attach one copy of the most standard form(s) and a schedule(s) showing the name and address of each lender, and the dollar value of the subordinated items on each agreement.

~~(D)~~ (iv) Furnish the date applicant's fiscal year ends.

~~(E)~~ (v) Furnish applicant's minimum net capital requirement.

A broker-dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934 may file a copy of its most recent annual report of financial condition and its most recent quarterly financial report required under 17 CFR 240.17a-5 in lieu of ~~Items (A) and (B)~~ Items (i) and (ii) above.

~~2.~~ (B) Organizational Information.

~~(A)~~ (i) If applicant is a corporation, attach copies of articles, by-laws, amendments and certification.

~~(B)~~ (ii) If applicant is a partnership, attach partnership agreement and amendments.

~~(C)~~ (iii) If applicant is a limited liability company, attach copies of its articles of organization and amendments.

~~(D)~~ (iv) If applicant will conduct business under a fictitious name, attach a certified copy of the Fictitious Business Name Statement required by Section 17910, Business and Professions Code.

~~3.~~ (C) Other Exhibits.

~~(A)~~ (i) Attach a completed Customer Authorization of Disclosure of Financial Records on Form QR 500.261.

~~(B)~~ (ii) Unless applicant is a California corporation, or unless already on file with the Commissioner, attach completed Consent to Service of Process on Form 260.165.

(iii) If applicant is an individual owner (e.g., a sole proprietorship), attach a completed Statement of Citizenship, Alienage, and Immigration Status Form pursuant to Section 250.61 of these rules.

~~4.~~ (D) Exhibits Required by Applicants Not Registered Under The Securities Exchange Act of 1934 (*15 U.S.C. 78a et seq.*); or applicants whose agent records are not on file with CRD.

1 ~~(A)~~ (i) Attach a statement demonstrating compliance with the examination requirements of Section
2 260.217, Title 10, California Code of Regulations.

3 ~~(B)~~ (ii) Attach fingerprint Cards (California Department of Justice Form BID-7) and Fingerprint
4 Information Sheets (Form ADM 557) for each person listed on Schedule A, B or C of Form BD.

5 (E) The Commissioner may request additional information, documentation or detail pertaining to
6 Form BD to be filed with the Commissioner.

7 (2) FILING FEE: The fee for filing an initial application is \$300 as prescribed in Section 25608(o).
8 Checks shall be made payable to the DEPARTMENT OF CORPORATIONS. Fees are not
9 refundable except pursuant to Section 250.15.

10 (3) COMPLETION OF FILING: For the purposes of Section 250.51, an application for a certificate
11 as a broker-dealer is not considered filed until the required fee and all required submissions are
12 received by the Commissioner.

13 (c) AMENDMENTS TO FORM BD: Any amendments to Form BD shall be filed pursuant to
14 Section 260.241.4 of these rules.

15 (d) ANNUAL ASSESSMENT: The annual assessment shall consist of the fee as prescribed
16 in Section 25608(o). The minimum assessment of \$75 shall be filed through CRD in accordance
17 with its procedures by the 31st of December for transmission to the Commissioner. This fee shall
18 keep the certificate in effect for an additional period. Broker-dealers not filing through CRD shall
19 pay the minimum assessment of \$75 directly to the Commissioner by the 31st of December.

20 (e) SUCCESSIONS: In the event that a broker-dealer succeeds to and continues the business of a
21 broker-dealer holding a current certificate, both the predecessor broker-dealer and the successor
22 broker-dealer shall follow Rule 15b1-3 under the Securities Exchange Act of 1934 (12 C.F.R. §
23 240.15b1-3) for the filing of a Form BD, an amendment to Form BD, or Form BDW, as applicable.
24 Form BD shall be filed in the manner set forth in subdivision (a) or (b) of this section, as applicable.

1 An amendment to Form BD shall be filed in the manner set forth in subdivision (c) of this section.
2 Form BDW shall be filed in the manner set forth in Section 260.242 of these rules.

3
4 ~~PART IV. INVESTMENT ADVISER ACTIVITIES.~~

5
6 ~~The exemption in Section 25205 of the Corporations Code is not available if the broker-~~
7 ~~dealer is registered with the Securities and Exchange Commission as an investment adviser. Broker-~~
8 ~~dealers that are registered with the Securities and Exchange Commission as an investment adviser~~
9 ~~should make a notice filing as required by Corporations Code Section 25230.1(b).~~

10
11 ~~If the broker-dealer performs investment advisory services for which it receives special~~
12 ~~compensation and proposes to rely upon the exemption in Section 25205 of the Corporations Code~~
13 ~~from the investment adviser certification requirements in Section 25230 of the Corporations Code,~~
14 ~~attach the following:~~

15 ~~1. A copy of of Form ADV (Uniform Application for Investment Adviser Registration) (17~~
16 ~~CFR 279.1).~~

17 ~~2. A list of all investment adviser representatives or associated persons. This list must be~~
18 ~~submitted on company letterhead and include the complete name of each investment adviser~~
19 ~~representative or associated person, their CRD number (if any), business address (mailing address,~~
20 ~~city, state, and zip code), and an affirmative statement that all investment adviser representatives or~~
21 ~~associated persons on the list meet the qualification requirements set forth under Section 260.236,~~
22 ~~Title 10, California Code of Regulations. The affirmative statement must be signed, under penalty~~
23 ~~of perjury, by an officer of the Adviser.~~

24 ~~3. Reporting fee of \$25 for each investment adviser representative or associated person~~
25 ~~whose name appears on the list provided to the Department pursuant to this rule.~~

1 Note: Social Security Account Numbers: In accordance with Section 7 of the Privacy Act of
2 1974 (PL. 93-579), the following information is provided in connection with the disclosure of a
3 social security account number in the Schedules to Form BD.

4 Disclosure of a social security account number shall be considered a voluntary disclosure,
5 except as provided below. A social security account number is solicited pursuant to one or more of
6 the following authorities:

7
8 Sections 25211 and 25231, Corporations Code.

9 Sections 260.211 and 260.231, Title 10, California Code of Regulations.

10 Section 17520, Family Code.

11
12 Uses to be made of social security account numbers solicited by Form BD and the Schedules
13 thereto are:

14 A. For all persons disclosing a social security account number, the number may be used, in
15 addition to other information provided, to conduct a background investigation of the individual by
16 the Department of Justice's Identification and Information Branch or by other federal, state or local
17 law enforcement agencies. The social security number may also be used to respond to requests for
18 this number made by child support agencies.

19 B. The completed form, except any disclosed social security account numbers, shall become
20 a public record and available to members of the public pursuant to the provisions of the Public
21 Records Act (Government Code Sections 6250 et seq.).

22
23 Note: Authority cited: Sections 25211~~(a)~~ and 25610, Corporations Code. Reference:
24 Sections 25205, 25210, 25211, 25230, 25230.1, 25231, 25241, ~~and 25608(p)~~, 25608 and 25612.5,
25 Corporations Code; and Section 17520, Family Code.

2. Section 260.211.1 is amended to read:

260.211.1. Application for License by Notification

(a) An application for licensing by notification pursuant to Section 25211(b) of the Code shall be made upon the form specified in subsection (b). The exemption in Section 25205 of the Corporations Code is not available if the broker-dealer is registered with the Securities and Exchange Commission as an investment adviser. Broker-dealers that are registered with the Securities and Exchange Commission as an investment adviser should make a notice filing as required by Corporations Code Section 25230.1(b). If the broker-dealer also engages in business as a investment adviser in this state and is not licensed as an investment adviser pursuant to Section 25230, it shall file with its application pursuant to subsection (b):

~~(1) a copy of of the Form ADV (Uniform Application for Investment Adviser Registration) (17 CFR 279.1).~~

~~(2) A list of all investment adviser representatives or associated persons. This list must be submitted on company letterhead and include the complete name of each investment adviser representative or associated person, their CRD number (if any), business address (mailing address, city, state, and zip code), and an affirmative statement that all investment adviser representatives or associated persons on the list meet the qualification requirements set forth under Section 260.236, Title 10, California Code of Regulations. The affirmative statement must be signed, under penalty of perjury, by an officer of the Adviser.~~

~~3. Reporting fee of \$25 for each investment adviser representative or associated person whose name appears on the list provided to the Department pursuant to this rule.~~

~~(b) An application pursuant to Section 25211(b) shall be in the following form and contain the information therein specified:~~

Mail to:

Fee: \$300

State of California

File No. _____

Department of Corporations

Date of Application _____

1515 K Street, Suite 200

Sacramento, CA 95814-4052

DEPARTMENT OF CORPORATIONS

STATE OF CALIFORNIA

APPLICATION BY NOTIFICATION

PURSUANT TO CORPORATIONS CODE SEC. 25211(b)

FOR BROKER-DEALER CERTIFICATE

(Only for Use in Connection with Applications and Amendments to Applications for Broker-Dealer Certificate Pursuant to Section 25211(b), Corporations Code (Application by Notification), and Section 260.241.4, Title 10, California Code of Regulations.)

1. Date of Notice ._____.

2. () Original Notice () Amended Notice

3. Name of Broker-Dealer

Address of Principal Office

4. Name and address of officer or partner of the broker-dealer who is to receive compliance and information communications from the Department and who is responsible for disseminating the same within the broker-dealer's organization.

Name _____ Title _____

1 Address _____ Telephone () _____

2 _____
3 (See Corporations Code Section 25245)
4

5 5. The following representations are made to the Commissioner of Corporations by the broker-
6 dealer.

7 a. The broker-dealer has a currently effective registration as a broker-dealer under the Securities
8 Exchange Act of 1934 (*15 USC 78a et seq.*).

9 b. The broker-dealer is a member in good standing of the self-regulatory organizations checked:

10 () NYSE () AMEX (~~) PSE~~ (~~) NASD~~

11 c. Check the applicable box:

12 () (1) The broker-dealer has never had a certificate as a broker-dealer, investment adviser or
13 agent revoked, or an application for such a certificate denied, under the Corporate Securities Law of
14 1968 or any predecessor statute.

15
16 () (2) The Commissioner has by order waived the denial or revocation of a certificate as a
17 broker-dealer, investment adviser or agent heretofore issued to the broker-dealer.

18
19 6. Exhibits. Attach the following exhibits:

20 a. Unless the broker-dealer is a California corporation, or unless already on file with the
21 Commissioner, attach a copy of Form 260.165 (Consent to Service of Process).

22 b. Attach a completed Customer Authorization of Disclosure of Financial Records on Form QR
23 500.261.

24 c. If the broker-dealer is an individual owner (e.g., a sole proprietorship), attach the Statement of
25 Citizenship, Alienage, and Immigration Status Form pursuant to Section 250.61 of these rules.

1 d. Attach a completed Form BD and the Schedules thereto.

2
3 NOTE: Social Security Numbers: In accordance with Section 7 of the Privacy Act of 1974 (PL.
4 93-579), the following information is provided in connection with the disclosure of social security
5 account numbers in ~~the Schedules to Form BD.~~ Form BD and the Schedules thereto.

6
7 Disclosure of a social security account number shall be considered a voluntary disclosure, except as
8 provided below. A social security account number is solicited pursuant to one or more of the
9 following authorities:

10
11 Sections 25211 and 25231, Corporations Code.

12 Sections 260.211 and 260.231, Title 10, California Code of Regulations.

13 Section 17520, Family Code.

14
15 Uses to be made of social security account numbers, solicited by Form BD and the Schedules
16 thereto are:

17
18 A. For all persons disclosing social security account numbers, the number may be used, in
19 addition to other information provided, to conduct a background investigation of the individual by
20 the Department of Justice's Identification and Information Branch or by other federal, state or local
21 law enforcement agencies. The social security number may also be used to respond to requests for
22 this information made by child support agencies.

23 B. The completed form, except any disclosed social security account numbers, shall become a
24 public record and available to members of the public pursuant to the provisions of the Public
25 Records Act (Government Code Sections 2650 et seq.).

1
2 7. Applicant's Minimum Net Capital Requirement: \$ _____

3
4 8. Applicant's Fiscal Year Ends ____/____(Month/Day)

5
6 ~~9. Investment Adviser Activities:~~

7
8 ~~If the broker-dealer performs investment advisory services for which it receives special~~
9 ~~compensation and proposes to rely upon the exemption in Section 25205 of the Corporations Code~~
10 ~~from the investment adviser certification requirements in Section 25230 of the Corporations Code,~~
11 ~~attach the following:~~

12
13 ~~—(a) A copy of of the Form ADV (Uniform Application for Investment Adviser Registration) (17~~
14 ~~CFR 279.1).~~

15
16 ~~—(b) A list of all investment adviser representatives or associated persons. This list must be~~
17 ~~submitted on company letterhead and include the complete name of each investment adviser~~
18 ~~representative or associated person, their CRD number (if any), business address (mailing address,~~
19 ~~city, state, and zip code), and an affirmative statement that all investment adviser representatives or~~
20 ~~associated persons on the list meet the qualification requirements set forth under Section 260.236,~~
21 ~~Title 10, California Code of Regulations. The affirmative statement must be signed, under penalty~~
22 ~~of perjury, by an officer of the Adviser.~~

23 ~~—(c) Reporting fee of \$25 for each investment adviser representative or associated person whose~~
24 ~~name appears on the list provided to the Department pursuant to this rule.~~

1 40 9. Execution:

2
3 _____ .

4 By _____

5 _____

6 (Title)

7
8 (b) The Commissioner hereby disqualifies the National Association of Securities Dealers
9 from the provisions of subdivision (b) of Section 25211 of the Code. A broker-dealer who is a
10 member of the National Association of Securities Dealers may file an application through the
11 Central Registration Depository as provided in subdivision (a) of Section 260.211 of these rules.

12 (c) The Commissioner hereby disqualifies the Pacific Stock Exchange from the provisions
13 of subdivision (b) of Section 25211 of the Code.

14
15 Note: Authority cited: Sections 25211(b) and 25610, Corporations Code. Reference: Sections
16 ~~25205~~, 25210, 25211, ~~25230~~, ~~25230.1~~, ~~25231~~, 25241 and 25608(p), Corporations Code.